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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,666	07/12/2001	Edward Anthony Bezek	CFLAY.00046	6182
22858	7590	03/30/2004	EXAMINER	
CARSTENS YEE & CAHOON, LLP			NORDMEYER, PATRICIA L	
P O BOX 802334			ART UNIT	
DALLAS, TX 75380			PAPER NUMBER	

1772

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,666

Applicant(s)

BEZEK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawn Rejections

1. The 35 U.S.C. 103 rejection of claims 1 – 3 and 5 – 12 over Bettel, III in view of Jones et al. is withdrawn due to Applicant's amendments in the paper dated January 28, 2004.

New Rejections

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 5 – 12 and 13 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettel, III (USPN 5,320,889) in view of Jones et al. (USPN 6,063,414).

Bettel, III discloses a container and the method for making a container for food products (Column 1, lines 6 – 11) by forming a liner, the inner most layer that is contact with the product, made from ethyl vinyl alcohol (Column 2, lines 45 – 49 and Figure 2, #, #42). Attached to the ethylene vinyl alcohol layer is a layer of high-density polyethylene (Column 2, lines 50 – 52, Column 3, lines 38 – 39 and Figure 2, #30). An adhesive layer is interposed between the two layers in order to adhere the layers of material together in the container (Column 3, lines 47 – 51 and Figure 2, #40). The liner has a thickness between 0.5 and 2 mils (Column 3, lines 58 – 60).

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The layer of ethylene vinyl alcohol provides an oxygen barrier to maintain flavor and taste of the contained product when kept away from moisture (Column 4, lines 48 – 53 and 64 – 68). As seen in Figure 1, sealing the container with a lid to seal the container from the outside environment. However, Bettel, III fails to disclose the ethylene vinyl alcohol film having a thickness less than 0.5 mils, a thickness of 0.1 thick, the dry food product acting as a desiccant to draw moisture away from the ethylene vinyl alcohol layer and the dry food product comprising a water activity of less than 0.6 or 0.4 upon the sealing step.

Jones et al. teaches placing a dry pet food with a water activity 0.7 or less (Column 11, lines 16 – 17) that acts as a desiccant since water binds to the soluble fiber material (Column 5, lines 3 – 6) in a polymer (Column 11, lines 7 – 9) container of gas impermeable materials (Column 5, lines 1 – 2) for the purpose of packaging food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a dry food product with a water activity 0.7 or less to act as a desiccant in a container in Bettel, III in order to package food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product as taught by Jones et al.

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Regarding the limitations of thickness of less than 0.5 mils and approximately 0.1 mils thick in claims 1, 3, 7, 10 and 13, Bettel, III discloses the claimed invention except for the thickness of the ethylene vinyl alcohol layer being approximately 0.1 mils thick. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provide an ethylene alcohol layer with a thickness of approximately 0.1 mils since Bettel, III discloses that it is known to make the bottle as thin as possible in order to use a smaller amount of material in the bottle to reduce the cost of the finished product (Column 3, lines 20 – 22). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have modified the ethylene vinyl alcohol layer with the thickness of approximately 0.1 mils as suggested by Bettel's discloses above.

Regarding the limitation of the layer of ethylene vinyl alcohol film provides an effective oxygen barrier to maintain freshness of said dry food product in claim 1, 7 and 13, Bettel III clearly discloses that a dry portion of the ethylene vinyl alcohol is an oxygen barrier (Column 4, lines 51 – 53 and 64 – 68). Since Jones teaches a dry dog food that works as a desiccant, i.e. absorbs moisture in the container, the inside of the Bettel container would be a dry environment, thereby allowing the ethylene vinyl alcohol to be dry and act as an oxygen barrier to maintain freshness of the contained item.

Response to Arguments

4. Applicant's arguments with respect to claims 1 – 3 and 5 – 12 have been considered but are moot in view of the new ground(s) of rejection. The Applicant's arguments were directed

towards the new limitations presented in the claims. Please see the above rejection to see the response to the arguments.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

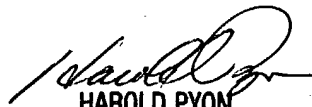
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
Art Unit 1772

pln
pln


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/15/04